

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3                   INDECK KEYSTONE ENERGY, LLC, :  
4                   Plaintiff                         :  
5                   v.                                 : Case No. 04-325 Erie  
6                   VICTORY ENERGY OPERATIONS, LLC, :  
7                   Defendant                         :  
8

9                   Deposition of TERRENCE SCOTT PAWLOWSKI, taken  
10                  before and by Sondra A. Black, Notary Public in  
11                  and for the Commonwealth of Pennsylvania, on Thursday,  
12                  November 10, 2005, commencing at 9:03 a.m., at the  
13                  offices of Marshall Dennehey Warner Coleman & Goggin,  
14                  1001 State Street, Erie, Pennsylvania 16501.

15  
16                  For the Plaintiff:

17                  John K. Gisleson, Esquire  
18                  Schnader Harrison Segal & Lewis, LLP  
19                  Fifth Avenue Place  
20                  120 Fifth Avenue, Suite 2700  
21                  Pittsburgh, PA 15222

22                  For the Defendant:

23                  Christopher T. Sheean, Esquire  
24                  Wildman Harrold Allen & Dixon, LLP  
25                  225 West Wacker Drive  
                      Chicago, IL 60606

**CONFIDENTIAL**

26                  Reported by Sondra A. Black  
27                  Ferguson & Holdnack Reporting, Inc.

1 recall, was about six months during that ownership period.

2 A. Roughly, yeah. And I was involved, as you say, more  
3 with Victory at that point then when I transferred over.

4 When I was in the after-market group, I may have cursory  
5 stuff with Victory, but I don't really recall anything to any  
6 great detail.

7 Q. What -- strike that. Can you tell me, to the best  
8 of your recollection, what you and Ted discussed relative to  
9 the range of products licensed under the license agreement.

10 MR. GISLESON: Objection. He said range of units.

11 Q. Range of units. Whatever the terminology that you  
12 used was.

13 A. That it was from the 150,000 down, the M series.

14 Q. So you were just confirming with Mr. Fuhrman what  
15 the size range was?

16 A. Basically.

17 Q. Now, you've testified that you had an understanding  
18 of -- strike that. I believe you said your understanding was  
19 the license agreement was for the M series boilers, correct?

20 A. Yes.

21 Q. What's your definition of the M series boilers?

22 A. Tangent tube furnace, outer wall refractory front  
23 wall and rear, in a particular size range.

24 Q. Could an M series boiler have membrane wall?

25 MR. GISLESON: Objection.

1 Q. I'm asking for your understanding.

2 A. As defined as an M series, no -- you said welded  
3 wall or membrane wall?

4 Q. Fair. Could an M series boiler have a welded wall?

5 A. It wouldn't be an M series if it did have a welded  
6 wall.

7 Q. Could an M series boiler have a membrane wall?

8 A. I'm sorry, I'm getting the terminology -- rephrase  
9 that one more time, please. I think I misspoke.

10 Q. Could an M series boiler have a welded wall for the  
11 furnace wall?

12 A. Yes.

13 MR. GISLESON: Objection. Vague.

14 A. Welded meaning tube-to-tube weld.

15 Q. Could an M series boiler have a membrane wall?

16 A. No. Which would be a tube-to-bar weld.

17 MR. GISLESON: Take a quick break?

18 MR. SHEEAN: Let me just get through the next  
19 couple of questions.

20 Q. Do you know of any document that specifically  
21 indicates that a boiler is not an M series boiler if it has a  
22 membrane wall?

23 A. There's a set of documents that show what an M  
24 series is, and none of those documents -- the standard  
25 drawing documents show it as a welded wall -- or membrane

1 wall. I'm sorry, I'm confusing the terminology here.

2 Q. Is there any definition or -- sorry, strike that.  
3 Is there like a title of the drawings or the documents that  
4 you're talking about that would identify what is or what is  
5 not an M series boiler?

6 A. There's a series of drawings that show what the M  
7 series line is.

8 Q. What are those drawings called?

9 A. There's a series of drawings. The drawing numbers I  
10 don't recall.

11 Q. So it's just the series -- the numbers themselves  
12 would indicate whether it's an M series or not?

13 A. They're identified as an M series on the drawings.

14 Q. Would -- strike that. If a boiler has an  
15 economizer, is it still an M series boiler?

16 A. It could be.

17 Q. If a boiler had a deaerator, would it be considered  
18 an M series boiler?

19 A. It could be.

20 Q. If a boiler had a heating coil on the lower drum,  
21 could it still be considered an M series?

22 A. Yes.

23 Q. If a boiler had a superheater, could it still be  
24 considered an M series boiler?

25 A. Yes.

1 A. Yes.

2 Q. Is a welded wall front -- strike that. Is a boiler  
3 with a welded wall front an M series boiler?

4 MR. GISLESON: Objection. Asked and answered.

5 A. Not to -- I would not consider it.

6 Q. Did you ever have a conversation with anyone at  
7 Zurn, Aalborg, or Erie Power wherein someone informed you  
8 that a welded wall front was a feature of an M series boiler?

9 A. I do not recall one.

10 Q. Are you aware of whether or not -- strike that. Do  
11 you know what the KPSC program is relative to the Keystone  
12 boilers?

13 A. Yes.

14 Q. What is the KPSC program?

15 A. It's the engineering software -- it's the computer  
16 software that we use to design, from a heating -- a process  
17 standpoint, the Keystone boiler.

18 Q. And that software is used to rate the boilers,  
19 correct?

20 A. Yes.

21 Q. Did you ever become aware that Erie Power provided  
22 Victory Energy with a Unix workstation loaded with the KPSC  
23 software?

24 A. Yes.

25 Q. Were you involved in any way in preparing that Unix

1 of the technology crosses.

2 Q. Would some -- strike that. Is it necessary to refer  
3 to the Keystone design guide in order to design and  
4 manufacture a Keystone boiler?

5 A. I'm sorry, could you --

6 Q. Would it be necessary to refer to the Keystone  
7 design guide in order to design and manufacture a Keystone  
8 boiler?

9 A. For me?

10 MR. GISLESON: Objection. Necessary to him or to  
11 whom?

12 Q. Would it be necessary for a third party, someone  
13 outside of Zurn, Aalborg, or Erie Power, to have access to  
14 the Keystone design guide in order to design and manufacture  
15 a Keystone boiler?

16 A. Yes.

17 Q. Do you have an understanding of whether the Keystone  
18 design guide was provided to Victory Energy?

19 A. I don't know if it was or was not.

20 Q. Would you expect that Erie Power would have provided  
21 Victory Energy with a copy of the Keystone design guide in  
22 order to enable them to design and manufacture the boiler?

23 A. I don't know if it was or was not.

24 Q. I understand you don't know if it was actually  
25 provided. My last question was a little different, and that

1       is, would you expect that a copy of the design guide for the  
2       Keystone boilers was provided to Victory Energy under the  
3       license to allow Victory Energy to design and build Keystone  
4       boilers?

5                    MR. GISLESON: Objection. Foundation.

6       A.     The design guide would cover a lot of items that may  
7       not be in the license agreement. So I don't know if they  
8       would have given them a full copy or not.

9       Q.     Would you expect that the design guide -- strike  
10      that. Would you expect that Erie Power would have given  
11      Victory Energy at least a stripped-down version of the design  
12      guide in order to allow Victory Energy to design and build  
13      the Keystone boilers it was licensed to build?

14      A.     I don't know if that would be required or not, if  
15      they were giving them the M series information, because the M  
16      series information has quite a bit of detail in it. So I  
17      don't know what package was given to them.

18      Q.     I'm aware that you do not know --

19      A.     Okay.

20      Q.     -- what was given to Victory Energy. And I'm trying  
21      to ascertain whether or not you would have expected Victory  
22      to receive this information given that there was -- strike  
23      that. Let me ask you a different question.

24      A.     Okay.

25      Q.     Did you understand that Victory Energy, pursuant to

A. It's a pressurized unit. So refractory or nonrefractory, it's seal welded.

Q. The tubes are not welded together in any refractory front boiler, are they?

MR. GISLESON: You're talking past each other

A. No. But it's seal welded

Q. Do the drawings of the Keystone M series standard boiler identified in Annex 1 provide for seal welded tangent tubes?

A. I don't understand the question

Q. Do you see anywhere in this drawing a reference to the tangent tubes in either the furnace wall or the convection wall being seal welded?

A. No, I do not.

MR. SHEEAN: Those are all the questions I have.

MR. GISLESON: I just have a couple quick questions.

## CROSS-EXAMINATION

BY MR. GISLESON:

Q. You looked at the Keystone engineering design guide, and you referred to some drawings in the design guide pertaining to the standard Keystone M series. Are those drawings included at Pages VEO1655 through 1662?

1 A. Where are you at?

2 Q. VEO1655 through VEO1662.

3 A. Yes.

4 Q. What do those drawings show, as you understand them?

5 A. The standard M series Keystone boiler.

6 Q. Do these drawings for the standard M series Keystone  
7 boiler show tangent tubes?

8 A. Yes, they do.

9 Q. On which pages?

10 A. Page 1657, 1658, 1659, 1660, 1661, and 1662.

11 Q. Where on the drawings are the tangent tubes  
12 identified? And what I'll do is give you a highlighter, and  
13 if you could highlight on your copy of the deposition  
14 exhibit --

15 MR. SHEEAN: Well, I'm going to object to that.

16 Only because the deposition exhibit was used in Bob  
17 Gdaniec's deposition where he didn't highlight on  
18 it, so --

19 MR. GISLESON: We can mark it as another copy.

20 MR. SHEEAN: I don't have another copy of Gdaniec  
21 20 that doesn't have writing all over it. If you  
22 want to use yours, that's fine.

23 Q. I'd like to show you what's been marked now as  
24 Pawlowski 5, which is the Keystone engineering design guide.  
25 And if you could mark on the first page where the tangent

tubes are shown, which is VE01657. Where the tangent tubes  
are on that page.

3 (Pawlowski Deposition Exhibit No. 5 marked for  
4 identification.)

5 A. Every single tangent tube?

6 Q. Yes. You can just highlight it in so it's clear  
7 where they are.

8 A. My eyesight's not great so -- they're small.

9 Q. So you highlighted tubes appearing in the middle  
10 drawing at the top of the page as well as at the bottom of  
11 the page; is that right?

12 A. That's correct.

Q. To the extent those drawings appear on subsequent pages, you'd highlight the same aspects?

15 A. That is correct.

16 Q. The sheets have a reference in the lower right-hand  
17 corner to KDB. Do you see those initials? .

18 A. That's correct.

19 Q. What does KDB stand for?

20           A. That was the engineer standard numbers for the M  
21 series.

Q. What's meant by engineering standard numbers?

23           A. They were a series of drawings and standard pages  
24 which were constructed together for the M series

25 Q. So that the standard drawings for the M series are

1 those bearing the KDB prefix?

2 A. They should, yes. If memory serves me right, I  
3 think that's all they used throughout the entire standard  
4 line.

5 Q. You were asked questions about the sectional view of  
6 the steam drum internals with the vortex cans and the  
7 Chevrons that were shown either in a power point presentation  
8 or in sales literature. Do you recall that?

9 A. Yes.

10 Q. Are those the only drawings of the drum internals  
11 that EPTI or its predecessors had?

12 A. Those are the only drawings.

13 Q. I'll rephrase it. Did EPTI or its predecessors have  
14 more detailed drawings --

15 A. Yes.

16 Q. -- of the drum internals?

17 A. Yes. 67

18 Q. Were the detailed drawings the ones that were used  
19 to design the drum internals?

20 MR. SHEEAN: Objection. Lack of foundation.

21 Q. You can answer.

22 A. They're the ones used to manufacture the drum -- the  
23 units, yes.

24 Q. Were the sectional views used in the power point  
25 presentation you looked at, or in any sales brochures, the